

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Action No. 5:08CR22-08
(STAMP)

EDWIN DIAZ,

Defendant.

**ORDER ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S
RECOMMENDATION THAT DEFENDANT'S GUILTY PLEA BE ACCEPTED**

On July 21, 2008, defendant, Edwin Diaz, appeared before United States Magistrate Judge James E. Seibert and moved this Court for permission to withdraw his plea of NOT GUILTY to Count One and enter a plea of GUILTY. The defendant stated that he understood that the magistrate judge is not a United States District Judge, and consented to pleading before the magistrate judge. This Court had referred the guilty plea to the magistrate judge for the purposes of administering the allocution pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted.

Based upon the defendant's statements during the plea hearing and the testimony of Special Agent Mark Simala of the Drug Enforcement Administration, the magistrate judge found that the defendant was competent to enter a plea, that the plea was freely and voluntarily given, that the defendant was aware of the nature of the charges against him and the consequences of the charges

against him and the consequences of his plea, and that a factual basis existed for the tendered plea. On July 22, 2008, the magistrate judge entered an order finding a factual basis for the plea and recommended that this Court accept the plea of guilty to Count One of the superseding indictment. No objection to the magistrate judge's report and recommendation has been filed.

Absent objections, a de novo review of the plea proceedings conducted by the magistrate judge is not required. United States v. Osborne, 345 F.3d 281, 290 (4th Cir. 2003). Accordingly, this Court finds that the magistrate judge's recommendation should be AFFIRMED and hereby ACCEPTS the plea of GUILTY to Count One of the superseding indictment.

The Court will DEFER adjudging the defendant GUILTY of the crime charged in Count One of the superseding indictment until the time of sentencing. Pursuant to Federal Rule of Criminal Procedure 11(c) and United States Sentencing Guideline § 6B1.1(c), acceptance of the proposed plea agreement is DEFERRED until the Court has received and reviewed the presentence report prepared in this matter.

Pursuant to United States Sentencing Guideline § 6A1 et seq., it is hereby ORDERED that:

1. The Probation Office shall undertake a presentence investigation of Edwin Diaz and prepare a presentence report for the Court;

2. Pursuant to the amended version of Federal Rule of Criminal Procedure 32(e)(3), effective December 1, 1994, the United States Probation officer is directed not to disclose to the defendant, the defendant's counsel, or the attorney for the Government the Probation Officer's recommendation, if any, on the sentence;

3. The presentence report shall be disclosed to the defendant, defense counsel, and the Government at least thirty-five (35) days before sentencing;

4. Within fourteen (14) days after receiving the presentence report, counsel shall file and serve written sentencing statements and objections to the presentence report, if any;

5. The defendant, Edwin Diaz, shall appear before the Court as later directed by the Court for sentencing or such other disposition as may be pronounced against him;

6. The magistrate judge's order that the defendant's personal recognizance bond be permitted to continue is AFFIRMED.

Further, the trial of this criminal action as to defendant Edwin Diaz is hereby VACATED.

IT IS SO ORDERED.

The Clerk is directed to transmit copies of this Order to counsel of record herein, the defendant, and all appropriate agencies.

DATED: July 29, 2008

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE